In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 989

ALBERT N. SHAHADI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Section 277 of the Internal Revenue Code of 1939, providing for the suspension of the running of the statute of limitations in certain circumstances, reads as follows:

> The running of the statute of limitations provided in section 275 and 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 272(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (*and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board*

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> [*Tax Court*], *until the decision of the Tax Court becomes final*), *and for sixty days thereafter.* [Emphasis added.]

Petitioner argues (Pet. 11–14), that these provisions do not apply where there has been a jeopardy assessment under Section 273 of the Code. Specifically, petitioner argues that the running of the statute is not suspended after a jeopardy assessment has been made even though "a proceeding in respect of the deficiency is placed on the docket of the Board [Tax Court]," as it was in this case. Petitioner's argument is inconsistent with the unqualified language of the parenthetical phrase of Section 277 and with the legislative history supporting the addition of this phrase to the statute, which states that:

> It is specifically provided in section 277 that the limitation period shall be suspended, *if any proceeding is placed on the docket of the Board,* until the decision of the Board in respect thereof becomes final and for 60 days thereafter. [Emphasis added.] [1]

In accordance with the unqualified language, the decided cases have uniformly construed Section 277, as the court of appeals here held, "in the broadest fashion," as suspending the running of the statute of limitations "when matters are being litigated in the Tax Court under *any* circumstances" (Pet. 6a). *Green Spring Dairy* v. *Commissioner,* 208 F. 2d 471,

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[1] H. Rep. No. 2, 70th Cong., 1st Sess., pp. 23–24 (1939–1 Cum. Bull. (Part 2) 384, 399–400); S. Rep. No. 960, 70th Cong., 1st Sess., pp. 31–32 (1939–1 Cum. Bull. (Part 2) 409, 431).

476–477 (C.A. 4th); *Estate of Iaconi* v. *Commissioner,* decided April 13, 1961 (P–H Memo T.C., par. 61,106); *Bartmer Automatic Self Service Laundry, Inc.* v. *Commissioner,* 35 T.C. 317; *American Equitable Assur. Co. of New York* v. *Helvering,* 68 F. 2d 46 (C.A. 2d); *Mutual Lumber Co.* v. *Poe,* 66 F. 2d 904 (C.A. 9th), certiorari denied, 290 U.S. 706; *Olds & Whipple* v. *United States,* 22 F. Supp. 809 (Ct. Cl.); *United States* v. *Shephard's Estate,* 196 F. Supp. 281 (N.D. N.Y.).[2]

In short, it is clear from both the language of the statute and the decided cases that the statute of limitations was suspended as long as petitioner's Tax Court case was pending.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

APRIL, 1965.

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[2] In *United States* v. *O'Connor* (291 F. 2d 520, 522 (C.A. 2)), upon which petitioner relies, suit was brought *before* the statute would have run, computing the statutory period without regard to the suspension provisions of Section 277. Thus no issue of the meaning of Section 277 was presented and the conflict asserted by petitioner (Pet. 5–6) does not exist.

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